IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO.55 OF 2006

Mrs.Mira Prakash Gokarn,)
Indian Adult Indian Inhabitant)
aged about 47 years, residing)
at 39, Chaupati Sea Face,)
Ground Floor, Charni Road(W),)
Mumbai-400 007.) ...APPELLANT.

VERSUS

Mr.Prakash Mangesh Gokarn)
An Adult Indian Inhabitant,)
Aged about 38 years, residing)
at A-29/6, AAI, Colony, Sahar)
Road, Andheri (E),)
Mumbai-400 099.) ...RESPONDENT.

Mr.N.V.Gangal, Advocate for the Appellant.

Ms.Poornima Bhatia, Advocate for the Respondent.

CORAM : SMT.RANJANA DESAI AND
SMT.V.K.TAHILRAMANI,JJ.

Date of Reserving
the Judgment:4th September,2006

Date of Pronouncing
the Judgment: 4th October,2006

ORAL JUDGMENT : (PER SMT.V.K.TAHILRAMANI,J.)

1. Appellant-Mira is the original respondent in Petition No.A-159 of 2002, filed by respondent-Prakash in the Family Court No.6 at Bandra, Mumbai praying inter alia for a decree of divorce under Section 13(1)(i-a) and 13(1)(i-b) of

the Hindu Marriage Act, 1955. Appellant-Mira is aggrieved by the judgment and order dated 22.3.2006 passed in the said petition dissolving the marriage between her and respondent-Prakash. By the said judgment and order, the claim of appellant-Mira for maintenance also came to be rejected.

2. It is necessary to give the gist of the case which gave rise to the divorce petition, as evident from the pleadings of the parties.

. Appellant-Mira and respondent-Prakash were married as per the Hindu Vedic Rites at Arya Samaj Hall, V.P. Road, Mumbai, on 25.6.1995. Appellant's maiden name was Mira Kesarichand Jhaveri. The couple has no issues.

3. It is the case of respondent-Prakash that his wife i.e.appellant-Mira was not carrying out duties of a housewife. The appellant-Mira being nine years older to respondent-Prakash used to dominate him and never obeyed his request or advice given in good faith. She used to behave in arrogant manner and abused in filthy language. She also used to harass his mother and also abused her using filthy language.

On her say, Respondent-Prakash used to go to her parents house in order to solve her family problems and even had to stay there many a time in order to solve the problems. After solving all the problems at her mother's place respondent-Prakash requested that they restart their independent life at a new place, hence he bought a new flat. However, she continued her cruel behaviour. She was negligent towards his daily needs. She often used to visit her parents place and used to stay there for a long time without intimating respondent-Prakash. She refused to include her name in the family ration card of respondent-Prakash. She also did not agree to sign the form of marriage certificate which resulted in the non-registration of the marriage. Appellant-Mira lodged a complaint against respondent-Prakash and his family alleging harassment. However, when respondent-Prakash was called by the special cell and he explained the true facts to them, they were satisfied. It is respondent-Prakash's case that his wife mentally tortured him and his family. There was no physical relationship between them since December, 1998 and she left the matrimonial home and went to stay at her mother's place in August, 1999 and thereafter she did not return. When

respondent-Prakash asked appellant-Mira whether she is ready to take divorce by mutual consent, she replied in the affirmative and told him to give a sizeable compensation towards permanent alimony as full and final settlement. As respondent-Prakash had no money, he agreed to transfer 800 shares of IDBI in her name. On 8.12.1999 appellant-Mira had come to matrimonial place with her friend Mrs.Hema Lobo with a form of transfer of share certificate to be signed by respondent-Prakash. Respondent-Prakash gave signatures on the transfer form, however, Mira did not sign on the papers relating to the divorce by mutual consent nor she gave any written acknowledgement in respect of transfer of shares and acknowledgement regarding her belongings including ornaments being given to her. In such situation, respondent-Prakash filed a Petition before the Family Court for divorce on the ground of cruelty and desertion.

4. The cruelty alleged by respondent-Prakash against appellant-Mira consists of the following :

1. Appellant-Mira was not interested in married life and was unable to perform matrimonial obligations;

2. As appellant-Mira is 9 years older

to respondent-Prakash, she used to dominate him. She made him stay at her mother's place at Charni Road to solve their family problems.

3. During his stay with appellant-Mira, she used to pick up quarrels, and abused him in most filthy language.

4. She never took any interest in household chores and made his old mother work.

5. Even after shifting to the new house she started visiting her mother's place without intimating respondent-Prakash and used to stay there for long time.

6. Appellant-Mira used to prevent respondent-Prakash from calling his friends and relatives to their house.

7. She refused to include her name in his family ration card.

8. She even refused to sign the form of marriage certificate resulting in non-registration of their marriage.

9. Appellant-Mira has lodged false complaints against him at Special Cell at the Police Commissioner's office, Mumbai which helps women in distress.

10. Though Mira agreed to take divorce by mutual consent on Prakash transferring IDBI shares then worth of Rs.1,20,000/- in her name, she refused to come forward for filling the petition for divorce by mutual consent.

5. Opposing the said Petition, appellant-Mira filed her written statement at Exh.4. She denied all the allegations made against her. According to her, respondent-Prakash has stated a fabricated story to prepare grounds for a divorce. She has stated that as per respondent-Prakash's suggestion, both of them had stayed at her mother's place at Chowpatty as respondent-Prakash had his own financial problems. Hence, on seeing the benefit of saving money and travelling convenience, it was respondent-Prakash who had suggested that they stay at her mother's place at Chowpatty. In this regard, she has also stated that respondent-Prakash felt that her mother would not accept an older woman than her son as his wife. She also stated that the mother of respondent-Prakash was a schizophrenic and hence, it was respondent-Prakash who felt that his mother should be sent to old age home, hence, they were living separately. Appellant-Mira had denied that she was not doing the household work and made his mother work. She has denied that she used to go her mother's place. As regards ration card, she stated that it was respondent-Prakash himself who offered her not to change her name in ration card due to the problem her mother had with the landlord. In respect of

registration of marriage, she has stated that the issue of registering the marriage was never discussed and infact respondent-Prakash had appointed her as his nominee, which is reflected in the registers of his employer i.e. Airport Authority of India.

6. Appellant-Mira has further stated that respondent-Prakash had paranoid personality problem. She has stated that infact she has been harassed and treated with cruelty by respondent-Prakash. She has stated that it was the respondent-Prakash who had thrown her out of the house in June, 1999. Lastly, she has stated that infact respondent-Prakash had caused her extreme mental tension and agony and she prayed for maintenance of Rs.10,000/- per month since respondent-Prakash was working in Airport Authority of India and earning not less than Rs.40,000/- per month. However, she has admitted in her written statement that she had agreed to give divorce by mutual consent. She has also admitted that respondent-Prakash has transferred shares relating to IDBI in her name.

7. In support of his case, respondent-Prakash has filed his claim affidavit at Exh.18. He has also

filed affidavit of his neighbour Mr.Subramanian Sekar which is at Exh.41. In addition to the oral evidence, respondent-Prakash has also produced some documents to which a reference will be made in due course. Appellant-Mira did not file her evidence, and after cross-examination of respondent-Prakash she remained absent.

8. After perusing the evidence on record, the trial Court held that respondent-Prakash had proved that appellant-Mira treated him with cruelty and deserted him for a continuous period of two years preceding his Petition before the Family Court. As regards maintenance, the trial Court observed that though appellant-Mira is unemployed, she has sufficient source of income and she is not dependent on anyone. It was held that she was in a position to support herself hence, she was not entitled to maintenance.

9. We have heard Mr.Nitin Gangal, the learned counsel for appellant-Mira and Ms.Poornima Bhatia, the learned counsel for respondent-Prakash. With the assistance of both the learned counsel, we have gone through the evidence.

10. Mr.Gangal submitted that respondent-Prakash has not made out any case for a decree of divorce. He has not been able to prove the allegations of cruelty as well as desertion. He submitted that infact, it was respondent-Prakash who had thrown appellant-Mira out of the matrimonial house. He further submitted that appellant-Mira had never treated respondent-Prakash with cruelty, but, infact respondent-Prakash has ill-treated and harassed her. It is case of respondent-Prakash that appellant-Mira used to go her mother's place for long periods of time without informing him. However, Mr.Gangal submitted that infact it was respondent-Prakash who insisted that they should reside at her mother's place. However, in view of the fact that there is no affidavit of evidence of appellant-Mira and since there is no cross examination of respondent-Prakash on this count, the respondent-Prakash's contention would have to be accepted. It has come in his evidence that after the marriage they rented a flat at Vasai and started staying there. Thereafter, they shifted to official quarters at Andheri. Whereas, appellant-Mira in her written statement has stated that seeing the benefit of saving money and

travelling convenience, respondent-Prakash suggested that they stay at her mother’s place at Chowpatty.

11. It is further case of respondent-Prakash that when he stayed at the mother’s place of appellant-Mira at Chowpatty, she used to behave in arrogant manner and used to quarrel with him and abused him in filthy language. Because of this, he was compelled to leave the house and eventually shifted to his office quarter. This contention of the appellant has also remained unshaken.

12. Respondent-Prakash had contended that appellant-Mira took no interest in the household work and made his old and ailing mother work. During his cross-examination, it was suggested that when they were staying in office quarter appellant-Mira was the only person who took care of the household work. However, respondent-Prakash has stated in his cross-examination that he had hired a servant for cooking and washing clothes. He was then asked if he can produce the vouchers to show the payments made to the servant. However, it is required to be accepted that nobody keeps vouchers of paying wages to the servants. Looking to the evidence on record, it is

required to be accepted that appellant-Mira was not taking care of household work when she and appellant shifted to the office quarter of respondent-Prakash.

13. The evidence of respondent-Prakash that appellant-Mira used to visit her mother's house and stay there for long periods of time, is corroborated by his witness Mr.Subramanian Sekar. Mr.Subramanian Sekar has stated that respondent-Prakash is his colleague and respondent-Prakash used to reside in the same building opposite his flat. Mr.Sekar has further stated that during the period that the couple were his neighbours, he observed that appellant-Mira was always visiting her maternal home on various excuses and staying there for 3/4 days of a week and she was quarrelling with respondent-Prakash. Mr.Sekar has further stated that he has seen that appellant-Mira was not co-operative and not willing to adjust with respondent-Prakash. This witness has not been cross-examined and hence his testimony has gone unchallenged and therefore is required to be accepted.

14. According to respondent-Prakash he is a social person and likes to meet with friends and relatives.

He used to attend many functions and get-togethers; and in return he wanted to call his friends and relatives at his home, but, due to the peculiar nature of appellant-Mira, she used to prevent him from calling his friends and relatives in order to avoid cleaning the house and keeping it neatly and to avoid preparation of various dishes There is no denial of this averment in the written statement of appellant-Mira. Moreover, on this aspect no questions are put to respondent-Prakash in the cross-examination to falsify his evidence.

15. It is respondent-Prakash's further contention that appellant-Mira refused to include her name in his family ration card by cancelling her name from her mother's ration card; and she even refused to sign the marriage registration form, due to which the marriage could not be registered. Appellant-Mira has denied these contentions in her written statement and has stated that respondent-Prakash himself had told her not to change her name in the ration card; and that the issue of registering the marriage was never discussed. On the other hand, she has stated that in the records of Airport Authority of India, she was shown as dependent wife and she was also appointed

nominee by respondent-Prakash on all his office papers. From the evidence on record, it is clear that they were married in 1995. From 1995 upto 1998-1999 i.e. for a period of three years, appellant-Mira's name was not included in the ration card of respondent-Prakash. The evidence of respondent-Prakash on this aspect is corroborated by his witness Mr.Sekar. Mr.Sekar has stated that when he tried to convince appellant-Mira to transfer her ration card and register the marriage certificate, she refused to do so without any valid reasons.

16. Respondent-Prakash has stated that appellant-Mira used to harass his mother and she used to insist that she be put in an old age home. There is no cross-examination on this point, hence this testimony goes unchallenged and we do not see any reason to disbelieve his evidence.

17. Respondent-Prakash has further contended that appellant-Mira had visited a special cell which helps women, at the Commissioner's Office at Mumbai and she lodged a false complaint against him and his family members alleging harassment to her. Pursuant to the complaint, respondent-Prakash was called at special

cell and when he explained to them the true facts, they were satisfied and the police did not take any steps against him. From this fact, it is seen that if there was any truth in the complaint made by appellant-Mira to the police against respondent-Prakash and his family, the police would have taken some steps. The very fact that no steps were taken by the police show that the police were satisfied with his explanation and hence the contention of respondent-Prakash is required to be accepted.

18. Respondent-Prakash has stated that despite repeated efforts on his part to lead a happy life, appellant-Mira did not respond. Eventually he asked appellant-Mira whether she wishes to continue the matrimonial relationship, to which she replied in the negative. Under these circumstances, he asked appellant-Mira whether she would be ready to take divorce by mutual consent, to which she replied in affirmative and demanded huge compensation towards alimony as full and final settlement. Respondent-Prakash has stated that as he did not have huge sum with him hence as per her demand, he agreed to transfer IDBI shares on her name. Accordingly, on

8.12.1999 appellant-Mira and her friend Mrs.Hema Lobo had come to the matrimonial home with blank forms of transfer of share certificate. He signed the same. Thereafter, she took away all her personal things including ornaments, but, she did not give any acknowledgment of receiving the shares or other articles nor gave signatures on the documents relating to divorce by mutual consent. We find the statement of respondent-Prakash to be believeable as the same is corroborated by his witness Mr.Sekar. Mr.Sekar has stated that he had attended the settlement meeting from respondent-Prakash's side when both the parties had agreed to settle the matter amicably by taking divorce by mutual consent and respondent-Prakash had given his signature to appellant-Mira on the form towards the compensation for mutual consent. Moreover, we find that appellant-Mira has admitted in paragraph 13 of her written statement that respondent-Prakash gave signature on the transfer form to transfer shares in her name. Besides this, respondent-Prakash has produced the documents which is at Exh.34 which shows that there were 800 shares in the name Prakash Gokarn. Respondent-Prakash has also produced a letter of Karvy Consultants Limited regarding

confirmation of share holding which shows that 800 shares of IDBI were transferred in the name of Mira Jhaveri and the said shares are held in her favour at present. Thus, this shows that respondent-Prakash transferred his 800 shares of IDBI in the name of appellant-Mira in view of consideration for divorce by mutual consent and towards all claims of appellant-Mira for lumpsum alimony.

19. Respondent-Prakash has further contended that after he transferred the said shares, appellant-Mira avoided to sign the papers relating to divorce by mutual consent. This shows that appellant-Mira after accepting the consideration towards the signing the papers for divorce by mutual consent, in order to harass respondent-Prakash did not come forward for signing the divorce papers. This must have certainly caused mental agony to respondent-Prakash. However, even thereafter he approached appellant-Mira on 12.10.2001 to see if the matter can be amicably settled by discussion, but, appellant-Mira slammed the door on his face. Thereafter, respondent-Prakash has sent notice through his advocate to appellant-Mira to come forward and comply with the formalities of taking divorce by mutual consent. In

her written statement, appellant-Mira has admitted that notice was sent to her. All these facts show that the behaviour of appellant-Mira was grossly excessive and was such as to cause severe mental agony and torture to respondent-Prakash. Apart from these facts, we find that certain allegations have been made by appellant-Mira against respondent-Prakash in her written statement as well as in the cross-examination. In her written statement appellant-Mira has stated that respondent-Prakash had a paranoid personality problem. In the cross-examination, it is suggested to respondent-Prakash that he was impotent and that he is incapable of having physical relationship. Though, respondent-Prakash has been cross-examined and several questions have been put to him, appellant-Mira was not able to prove that he suffered from any psychiatric illness or that he suffers from impotency or that he was incapable of having a physical relationship.

20. In the case of **Jaishree Mohan Otavnekar Vs. Mohan Govind Otavnekar, 1987 MLJ 160** it has been held that making wild, reckless and baseless allegations in the written statement itself constitutes cruelty.

In the case of **Mrs.Manisha Gade Vs. Sandeep Gade, AIR 2005, Bombay, 180**, the wife had made allegations against the husband in her written statement. In the said case, it was held that the wife failed to prove the allegations made by her and in such case it can be inferred that the said allegations constitute cruelty and the husband would thus be entitled to a decree of divorce on that count. So also in the case of **V.Bhagat Vs. D. Bhagat, 1994(1) SCC 337** in the written statement the wife had alleged that the husband was suffering from mental hallucination; that he had morbid mind for which he needs expert psychiatric treatment and that he was suffering from paranoid disorder. The Supreme Court held that the counter allegations made by the wife against the husband constitute mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife. The ratio of this judgment is also attracted to the present case. So also, in an unreported judgment of this Court dated 31.8.2006 passed in Family Court Appeal No.15 of 2006 (Vishwas Narhari Sahastrabhudhe Vs. Varda Vishwas Sahastrabudhe), to which one of us was party (i.e.Smt.Ranjana Desai,J.), it has been held that unsubstantiated allegations in the written statement

and in the evidence before the Court would support the claim made by the spouse that the other spouse caused mental cruelty by casting the said aspersions.

21. In the present case respondent-Prakash has not only narrated the incidents of cruelty, but, it is also brought to our notice that appellant-Mira has made unsubstantiated allegations against Prakash that he was suffering from paranoid personality problem as well as impotency. Looking to the evidence on record, we find that appellant-Mira was non-cooperative in her behaviour. Her behaviour could not be said to be on account of usual wear and tear of family marital life, but, infact her behaviour was grossly excessive as well as abnormal. Because of her behaviour, she has caused much harassment and unhappiness to respondent-Prakash which must have made a great impact on his mind which caused reasonable apprehension that it will be harmful and injurious to live with her.

22. We have already noted in this case that in the written statement itself appellant-Mira has made allegations against respondent-Prakash stating that he was suffering from paranoid personality problem.

Even in the cross-examination this has been repeated. In addition thereto in the cross-examination it is suggested that respondent-Prakash was impotent and was incapable of having physical relationship. In view of these facts and evidence on record we are of the considered opinion that appellant-Mira has inflicted physical and mental cruelty on respondent-Prakash, its degree is such that it is not possible for respondent-Prakash to live with appellant-Mira. Respondent-Prakash is therefore entitled to a decree of divorce under section 13(1)(ia) of the Hindu Marriage Act, 1955.

23. The second ground on which respondent-Prakash sought divorce is desertion. For proving desertion, existence of two ingredients is necessary. The first is the intention to desert or *animus desrandi* and secondly the factum of separation of two years preceding the presentation of the petition. It is the contention of respondent-Prakash that appellant-Mira left the matrimonial home and went to stay at her mother’s place in the month of August, 1999. Since then, appellant-Mira has deserted him and had withdrawn from his society and his company. Respondent-Prakash has further submitted that since

then there is no marital relations between him and appellant-Mira. Thus, he has been deprived of his conjugal rights by the appellant. It is pertinent to note that appellant-Mira has not refuted these contentions. In such case, it is required to be accepted that appellant-Mira has left respondent-Prakash in August, 1999 i.e. more than two years preceding the presentation of the petition before the Family Court as the petition was filed before the Family Court on 29.12.2001. In such case, the trial Court has rightly held that respondent-Prakash has proved the factum of separation. There is nothing on record to show that it was respondent-Prakash who had provoked appellant-Mira to behave the way she has behaved. On the other hand, the evidence on record shows that respondent-Prakash has made consistent efforts to bring back his wife, however without any success.

24. In view of these facts, we hold that appellant-Mira has intentionally deserted respondent-Prakash. In such case, respondent-Prakash has made out a case within the meaning of Section 13(1)(ib) of the Hindu Marriage Act, 1955.

25. Lastly, we come to the point of maintenance. According to appellant-Mira, respondent-Prakash gets a salary of Rs.40,000/- per month and hence she has sought maintenance of Rs.10,000/- per month. The documents produced by respondent-Prakash show that he is working at Airport Authority of India and his gross salary is Rs.23,865/- and after all deductions he gets only Rs.10,775/- in his hand. His old aged ailing mother is dependent on him and he is required to incur medical expenses for her. He has taken loan for purchase of flat at Vasai and is still paying the loan. According to respondent-Prakash appellant-Mira has sufficient source of income and she is not dependent on anyone. She has ancestral joint property at New Era Mills, Worli and from that she receives substantial amount of rent. Besides this she has huge amount of investment in shares and securities and is managing her own portfolio in shares and earns substantial amount by way of dividends on shares and securities and the same is sufficient to maintain her. She is also joint owner of the house at 39, Ground Floor, N.S.Road at Charni Road, Mumbai worth more than 2 Crores. She also has bank account in various banks such as State Bank of India, Opera House Branch, Bank of Baroda etc., and

she carries on all her transactions in her maiden name Mira Kesarichand Jhaveri. It is pertinent to note that appellant-Mira has not refuted these charges.

. During the pendency of the proceedings before the Family Court witness summons was issued to State Bank of India, Chowpatty branch to produce the details of statement of account of the appellant-Mira which is in her maiden name i.e. Mira Kesarichand Jhaveri. Accordingly the documents were produced by a State Bank employee, which shows that the appellant-Mira has joint account with one of her family members and there are transactions which show that she is receiving interest on securities. There are also entries of cheques received by her relating to dividends/interest received from Godrej Industries, Asian Paints, Silver Line, Gesco Corporation. Appellant-Mira herself has stated in her written statement that she is from affluent family because of which respondent-Prakash was getting inferiority complex. We do not see any reason not to accept respondent-Prakash’s contention about the property of the appellant-Mira and the income which she is getting from the said property

and shares. In addition to this it has come on record that towards the full and final consideration for divorce, respondent-Prakash had transferred 800 IDBI shares in the name of appellant-Mira. Thus, she has ample money at her disposal.

26. In view of the above, the trial Court held that appellant-Mira was in a position to support herself and that she was not entitled to any maintenance from respondent-Prakash. However, before us a very fair statement was made by Ms.Bhatia the learned counsel on instructions from respondent-Prakash, who was present in Court that in addition to 800 IDBI shares which have already been handed over by him to appellant-Mira, he would give a sum of Rs.2,50,000/- to appellant-Mira by way of full and final settlement. The said statement is accepted. In the circumstances, we pass the following order :

ORDER

I. The impugned judgment and decree to the extent it dissolves the marriage between appellant-Mira and

respondent-Prakash on the ground of cruelty as well as desertion is confirmed.

II. The marriage between appellant-Mira and respondent-Prakash stands dissolved by a decree of divorce under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955.

III. Respondent-Prakash will deposit an amount of Rs.2,50,000/- in this Court towards full and final settlement. The said amount will be deposited in equal monthly instalments of Rs.50,000/- each within a period of five months. The first instalment of Rs.50,000/- to be deposited by 31st October, 2006 and thereafter remaining Rs.2,00,000/- to be deposited in equal monthly instalments on 30th November, 2006, 31st December, 2006, 31st January, 2007 and 29th February, 2007.

IV. Family Court Appeal is disposed of in

the aforestated terms. No order as to costs.

[SMT.RANJANA DESAI,J.]

[SMT.V.K.TAHILRAMANI,J.]